HON'BLE SRI JUSTICE L. NARASIMHA REDDY
AND
HON'BLE SRI JUSTICE S.V. BHATT

APPEAL SUIT Nos.980 AND 981 OF 1998

COMMON JUDGMENT : (per Hon'ble Sri Justice S.V.Bhatt)

Defendants in O.S. Nos.290 and 292 of 1986, on the file of the Senior Civil Judge, Guntur, are the appellants. The plaintiffs are different, but the defendants are common in both suits. The factual controversy and the nature of claim pursued in the suits are substantially same. Hence, through the common judgment, these two appeals are disposed of.

The 1st respondent in A.S.No.980 of 1998 filed O.S. No.290 of 1986 on the file of Senior Civil Judge, Guntur against the appellants and other respondents for recovery of a sum of Rs.3,13,742/- towards compensation for delayed settlement and payment of insurance claim and sales tax paid by the 1st respondent on the insured goods with future interest at 17.5% p.a. till the date of payment.

The facts leading to the suit claim are that; the 1st respondent is a partnership firm registered under the Indian Partnership Act,1932, carrying on business in cotton and owns a Cotton Ginning Mill in Nagulapalem, adjacent to Peddanandipadu, Guntur District. It purchases cotton and kappas from cotton growers in and around Peddanandipadu and the material so purchased is ginned in the cotton ginning mill of respondent and the product i.e. lint is sent for pressing into bales, to the pressing factory. The 1st respondent pleaded that it has regular business transactions with one M/s. Sakala Veerabhaderaiah and Company at Peddanandipadu for undertaking cotton pressing of the lints sent by it, and the resultant bales are sold in the open market by it.

The 1st respondent obtained insurance policies from the appellants, to cover all risks of fire, flood etc., on the stocks of cotton/kappas/pressed bales of cotton at the factory premises of respondent and the stock stored at M/s. Sakala Veerabhadraiah and Co. The goods in stock/trade are comprehensively insured by the respondent with appellants herein. The two policies are, Policy No.41451/14/0/F/1919 for a sum of Rs.11,00,000/- and Policy No.41451/14/0/F/1920 for a sum of Rs.4,00,000/- covering the risk of fire, riot, strife, floods and malicious damage to stock-in- trade, plant and machinery etc. and were valid for a period of 12 months from 30.12.1983 to 30.12.1984.

The respondent stated that on 15.8.1984, there was a fire accident in the factory premises of M/s. Sakaala Veerabadraiah and Co. at Peddanandipadu in which its cotton bales were destroyed, resulting in huge loss. It has intimated the occurrence of fire accident to the appellants on the very next day. In response to the intimation received from the respondent, the appellants have, at the first instance, entrusted the matter to local surveyor, by name, Mr. Purnachander Rao to inspect the factory premises of Sakala Veerabhadraiah and Co., and submit a report on the claim of the respondent. Several other claims including that of M/s. Sakala Veerabhadraiah and Co. were received by the appellants.

The appellants have again entrusted the survey and assessment of loss to a second agency i.e. M/s. Mahatha and Padmashree Surveyors, Madras. The Surveyors and the respondent have arrived at the actual loss suffered by the appellants and prepared a joint memo dated 4.11.1984. It is the case of the respondent that along with the joint memo, the claim for settlement and payment of the agreed sum amounting to Rs.14,98,051/-was presented to the appellants and that the same was not settled by the

appellants. This resulted in issuance of series of reminders dated 12.11.1984, 04.02.1985, 03.02.1985 and 02.05.1985 to the appellants, but of no avail. The respondent was constrained to file writ petition No.9414 of 1985 in this Court for appropriate direction to appellants for finalisation of insurance claim. It is stated that in compliance with the directions issued in the writ petition, a sum of Rs.14,93,463/- was paid to the respondents.

The respondent further pleaded that under business credit arrangement and facility, it has borrowed substantial amounts from the State Bank of India, Varagani branch/ third defendant in the suit and as per the conditions of the credit facility extended by the Bank, it has purchased the insurance policies for the benefit of itself and the lending bank. It was alleged that on account of the delay in settlement of respondent's claim, the financial institution has imposed heavy burden on the respondent in the form of interest at quarterly rests, and that the appellants are under obligation to share that responsibility.

The appellants filed written statement pleading *inter alia* that the entire claim of the respondent was settled. It was alleged that fraudulent claims amounting to Rs.1,60,00,000/- have been made, with active collusion of one of its agents and that the matter has been investigated by the Central Bureau of Investigation. The appellants stated that though the claim of the respondents was found to be genuine, the delay in settlement thereof was occasioned in the course of distinguishing it from the fraudulent claims.

Their further plea was that there is no obligation under the insurance policy to pay interest to the insured and the maximum limit of liability accepted under both the policies is Rs.15,00,000/- and that under no circumstances, the claim can exceed the sum assured. It was pleaded that the claim cannot include interest, sales tax etc. The

appellants prayed for dismissal of the suit in its entirety.

The trial Court framed the following issues for trial.

(1) Whether the alleged joint memo, signed by the plaintiff and surveyor created any rights and binds the defendant?
(2) Whether the plaintiff is entitled to claim any suit amount against D1?
(3) Whether the plaintiff is entitled to claim any amount exceeding total sum insured?
(4) Whether the 1st defendant is liable for the loss?
(5) Whether the plaintiff is entitled for the suit amount?
(6) Whether the suit is bad for misjoinder of parties?
(7) To what relief?

On behalf of the respondents, one Dasari Ramachander Rao was examined as PW.1 and Exs. A.1 to A.13 were marked. On behalf of the appellants, one T. Tirupataiah was examined as DW.1 and Exs.B.1 to B.9 were marked.

A.S. No.981 of 1998 is directed against the decree and judgment in O.S.No.292 of 1986. The respondent therein filed the suit for recovery of a sum of Rs.42,071/- with further interest up to the date of realisation. The allegations in the instant suit are substantially same and similar, excepting for the fact that the amount covered by the insurance policy is Rs.2,00,000/-. It is also the case of the respondent that a joint memo was signed on 13.11.1984 and the appellants herein have not paid the amount till April,1986. It is on account of delayed payment of compensation for over two years that the present suit is filed for recovery of interest on the delayed payment.

The appellants filed written statement taking a stand similar to

the one taken in O.S. No.290 of 1986. Therefore, to avoid a repetition, the allegations in the plaint and the written statement are not set out in great detail.

In O.S. No.292 of 1986, the plaintiff examined one A.Veera Raghavaiah as PW.1 and marked Exs.A.1 to A.11 and on behalf of the appellants, one Thirupataiah was examined as DW.1 and Exs. B.1 to B.6 were marked. The trial Court after considering the material available on record, found on issue Nos.1 to 5 that the appellants herein have caused delay in paying the agreed amount. The payment in the month of April,1986 has indisputably caused loss to the respondents herein. The suits were decreed as prayed for, with future interest at 12% from the date of suit till the date of realisation. Aggrieved by the said decrees, the appeals are filed.

The learned counsel for the appellants submit that the trial Court committed an error, both in fact and in law by awarding interest on the delayed payment. The contention of the appellants is that the insurance policy is for a definite sum and there is no obligation on the part of the insurance company to pay over and above the assured sum. It is argued that the delay has occurred in verification of the claims since there were several fraudulent claims presented by the traders in relation to the fire accident at the factory premises of Sakala Veerabhadraiah and Company on 15.8.1984. The other submission is that there is no clause in the insurance policy, to pay interest.

On the other hand, the learned counsel for the respondent contended that the stocks have been hypothecated to State Bank of India and the insurance policies have been obtained both in the name of the respondent and also the financial institution. According to him, the purpose of obtaining the joint insurance policy is to ensure prompt and timely payment to the financial institution, in the event of any accident resulting in loss of insured goods. He submits that

through the joint memo dated November,1984, the respondent was very much satisfied about the existence of policy, happening of the fire accident and the loss of goods at the premises of Sakala Veerbahdraiah and Co. on 15.8.1984. Learned counsel submits that when these facts have been satisfactorily proved and the surveyors appointed by the appellants have certified the loss and the entitlement of respondents, the non-payment of the amount assured in the month of April,1986 has resulted in payment of quarterly interest by the respondents to the Bank and that the appellants are under obligation to satisfy and pay compensation to respondents.

In view of the arguments advanced before this Court, the following points arise for consideration viz.,

1. Whether the claim for compensation is justifiable in fact and enforceable against the appellants?
2. If so what is the measure of compensation and the rate of interest at which the same could be awarded?

Point No.1:

From the pleadings and the evidence available on record, the following facts are established. The respondent has insurance policy covering the loss of goods in fire etc. The coverage is up to Rs.15,00,000/- in O.S.No.290 of 1986 and Rs.2,00,000/- in O.S. No.292 of 1986. The loss of goods on 15.08.1984 on account of fire accident, during the subsistence of policies, is established and is accepted by the appellants.

The record discloses that due to the accident on 15.08.1984 at the godown of M/s.Sakala Veerabhadraiah and Co. there was enormous loss of goods but, along with certain genuine claims, quite a large fraudulent claims have also been presented, and in the course of verification, collusion of its officials with the claimants was also noticed. Therefore, the matter was entrusted for investigation to the Central Bureau of Investigation. The process of investigation of

all the claims relating to the fire accident on 15.08.1984 at the subject premises had taken considerably long time by the surveyors and the C.B.I. Even if the surveyors appointed by the appellants have certified the existence of policy coverage of goods and occurrence of the fire accident, the appellants were prevented from finalising the claims on account of the ongoing investigation by C.B.I. It is matter of record that on the basis of the report submitted by the Central Bureau of Investigation, several fraudulent claims were rejected by the trial Court and the decrees were confirmed by this Court in the connected batch of appeals. It is by referring to this circumstance that the justification for delayed payment is pleaded.

Notwithstanding the fact there was justification for the delay in settling the claims of the respondents, two important aspects cannot be ignored. The first is that the appellants have the advantage of keeping the amount with them all along, with its own derivative benefits. The second is that the respondents were not only deprived of the benefit of the claim but also were exposed to the liability to pay interest to the bank from which they borrowed amounts. The obligation under a policy, being purely contractual in nature, the respondents are entitled to expect natural flow of events.

The amount claimed in the suits is in the form of compensation for the delayed payment. The basis for claiming it is that the respondent was compelled to pay interest at quarterly rests at 17.5% to the third defendant in the suit. The respondent is claiming compensation towards the amount it paid to the State Bank of India. This Court is of the opinion that the claim of the respondent is justified and the same is enforceable against the appellants. Consequently, the point is answered accordingly.

Point No.2:

It is the case of the appellants that the claim of compensation

in the form of interest at 17.5% with quarterly rests is, firstly not supported by the insurance policy and secondly the rate of interest is very high. The learned counsel appearing for the respondent submits that the respondent is a small scale industry and on account of delay caused by the appellants, the respondent suffered enormous loss and the amount represents the actuals. The respondent, in fact, is not claiming any excess amount from the appellants and what has been claimed in the present scenario is only measure of reimbursement of actual payments the 1st respondent has made to the Bank.

On the totality of the circumstances, we are of the view that respondent is entitled to receive compensation by way of simple interest at 17.5% per annum. The subsequent interest at 12% per annum is reasonable since the transaction between the parties is one in the nature of commercial transaction. Hence, this Court confirms the subsequent rate of interest granted by the trial Court at 12% p.a.

The respondent cannot include any sum over and above the sum insured and consequently the claim of sales tax is unsustainable. The claim shall not exceed the sum insured. The loss of goods is assessed at Rs.14,98,051/-. The Apex Court while dealing with issue of outer limit of coverage in **United India Insurance Co. Ltd., v. Kantika Colour Lab**[1], observed:

> "……..The happening of the event against which insurance cover has been taken does not by itself entitle the assured to claim the amount stipulated in the policy. It is only upon proof of the actual loss, that the assured can claim reimbursement of the loss to the extent it is established, not exceeding the amount stipulated in the contract of insurance which signifies the outer limit of the insurance company's liability. The amount mentioned in the policy does not signify that the insurance company guarantees payment of the said amount regardless of the actual loss suffered by the insured."

Therefore, the appeals are allowed-in–part. The award of

amount towards sales tax is set-aside. Simple interest on the admitted claim at 17.5% per annum is awarded in the place of quarterly rests for the delayed period in settlement of the claim. The interest at 12% per annum from the date of the suit, till the date of realisation is confirmed. There shall be no order as to costs.

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L. NARASIMHA REDDY,J

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S.V. BHATT,J

Date:12.06.2013
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[1] (2010) 6 SCC 449